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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLEE.

J. TOM WATSON,
Attorney General of Florida;
NATHAN COCKRELL,
Assistant Attorney General;
Counsel for Appellee.

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BRIEF OF APPELLEE.

Reference to the Report of the Case in the Court Below.

The opinion of the court below was filed September 6, 1940, and appears as *Skiriotes* v. *The State of Florida*, 197 So. 736, and will be found in the Transcript of Record herein beginning on page 36.

Statement as to Jurisdiction.

The appellants filed and served upon opposing counsel his statement on the jurisdiction of the court conformable

to the rules of the court, and this Court has reserved its ruling on such jurisdiction until after the hearing on the merits.

Statement of the Case.

The Statement of the Case as presented in the brief for appellant is fairly made.

Specification of Assigned Errors.

The object of this appeal is to have this Court declare the description of the territorial limits of Florida as contained in the Constitution of 1868 and in the Constitution of 1885 invalid.

Summary of the Argument.

Point 1.

A citizen of Florida cannot question the boundaries of the State as defined by the Constitution of the State.

Point 2.

Acquiescence by its citizens and by the Federal government in the boundaries of Florida as defined by the Constitutions of 1868 and 1885 estop such parties from questioning the boundaries.

Point 3.

The establishment of a State boundary is a political rather than a judicial question and once established and recognized by the political departments of the state and nation the boundaries cannot be questioned by the judicial department.

Point 4.

The judiciary will recognize the action of the political department of the government as expressed by the Congress of the United States in approving the Florida Constitution

of 1868 which defined the boundaries of the State in words repeated in the Florida Constitution of 1885.

ARGUMENT.

Before the points contained in the summary are discussed, we will present briefly the history of the statute the violation of which caused the arrest of the appellant. Chapter 7389, Laws of Florida, Acts of 1917, now appearing as Section 8087 Compiled General Laws of Florida, 1927, was passed to protect and perpetuate one of the great natural resources of the State of Florida by prohibiting the gathering of sponges by the diving method from the territorial waters of the State. For nearly twenty years there was no serious contest of this statute since diving had been done for the most part beyond nine miles from the mainland of the State. Then the gathering of sponges in the deeper waters became less profitable for various reasons and the divers started working closer in shore. The statute was tested and the jurisdiction of the State of Florida upheld in the case of *Lipscomb* v. *Gialourakis,* 101 Fla. 1130, 133 So. 104. Thereafter, a group of divers sought to enjoin the enforcement of the act by a suit in the District Court of the United States for the Northern District of Florida, but a three judge court first denied jurisdiction for lack of the required amount, and then after an amended bill was filed it dismissed the suit on the ground that injunction was not the proper remedy. *Pope* v. *Blanton,* 10 Fed. Supp. 15, 18. An appeal to this Court was taken but dismissed after the filing of briefs on the merits for lack of showing of the jurisdictional amount. *Pope* v. *Blanton* 299 U. S. 521.

This appellant was thereafter arrested for violation of the statute and released on a writ of habeas corpus issued by the District Court of the United States for the Southern District of Florida from which the sheriff appealed to the Circuit Court of Appeals for the Fifth Circuit. After a

hearing upon such appeal the lower court was reversed. *Cunningham* v. *Skiriotes*, 101 F. (2d) 635. Then this appellant was tried upon a stipulation of facts and the statement of the case contains the subsequent history.

Point 1.

A citizen of Florida cannot question the boundaries of the State as defined by the Constitution of the State.

We will not set forth here the wording of the definition of the boundaries of the State of Florida as it appears in the Constitutions of 1868 and 1885 since the definition as well as the history of the boundaries appears in the brief for appellant. The Supreme Court of Florida has confirmed the boundaries of the State at three leagues in the case of *Lipscomb* v. *Gialourakis*, 101 Fla. 1130, 133 So. 104, and has reaffirmed such stand in the judgment rendered September 6, 1940, from which this appeal has been taken.

When the three-judge district court considered the statute involved herein in the injunction suit and denied the application for an interlocutory injunction, *Pope* v. *Blanton*, 10 Fed. Supp. 1822, it said:

> "When a State acts with the consent of Congress, either express or implied, its action becomes conclusive upon the citizens."

When this appellant used the Federal court to be freed from his arrest, the Circuit Court of Appeals in reversing the lower court said (*Cunningham* v. *Skiriotes*, 101 F. (2d) 635):

> "We doubt his ability to question before a court the boundaries which his sovereign has set up. Domestic rather than international law governs his relations to his own State."

This court has held in *Jones* v. *U. S.*, 137 U. S. 202, 34 L. Ed. 691:

> "Who is the sovereign, de jure or de facto of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government."

In Texas, which like Florida, has its boundary on the Gulf of Mexico defined as three leagues from the mainland, the highest court has held in *City of Galveston* v. *Menard*, 23 Tex. 349,391:

> "As between her own citizens * * * the boundary, prescribed and claimed by the government, is conclusive."

Point 2.

Acquiescence by its citizens and by the Federal Government in the boundaries of Florida as defined by the Constitutions of 1868 and 1885 estop such parties from questioning the boundaries.

The three-judge district court considering this question in *Pope* v. *Blanton*, 10 Fed. Supp. 18, 22, said:

> "The right of the State to fix its boundaries has never been questioned by any nation, by the Congress, or before, by any citizen of the State, and this acquiescence over a long period of time in the establishment of the boundary of the State is not only entitled to consideration by a Court in determining the right of the citizen to question the power of the sovereign State to change its boundary, but sufficient to estop the subject from questioning the right of the State to exercise dominion over its boundaries fixed by the Constitution and approved by the Congress."

This Court has held in the case of *Louisiana* v. *Mississippi*, 202 U. S. 1, 52:

> "As between the States of the Union long acquiescence in the assertion of a particular boundary, and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive, whatever the international rule may be in respect of the acquisition by prescription of large tracts of country claimed by both."

Point 3.

The establishment of a State boundary is a political rather than a judicial question and once established and recognized by the political departments of the State and Nation the boundaries cannot be questioned by Judicial Department.

The government of the United States as well as of the State of Florida was established with three separate branches, the judicial, the executive, and the legislative, with certain checks one on the other. It has long been recognized that the judiciary will not invade the political field. Once a question is determined to be a political one, the courts will not pass upon it.

The question of the boundary of a state or nation has repeatedly been held to be a political and not a judicial one. In *Poole* v. *Fleeger*, 36 U. S. 185, 209, there was a dispute whether a certain parcel of land was in Tennessee or Kentucky, and this court held:

> "It cannot be doubted, that it is a part of the general right of sovereignty, belonging to independent nations, to establish and fix the disputed boundaries between their respective territories; and the boundaries so established and fixed by compact between nations, become conclusive upon all the subjects and citizens there-

> of, and bind their rights; and are to be treated, to all intents and purposes, as the true and real boundaries. This is a doctrine universally recognized in the law and practice of nations. It is a right equally belonging to the states of this Union; unless it has been surrendered under the constitution of the United States. So far from there being any pretence of such a general surrender of the right, that it is expressly recognised by the constitution, and guarded in its exercise by a single limitation or restriction, requiring the consent of Congress."

In the concurring opinion of Justice Baldwin in the same case appears the following:

> "Where there is an agreement, it is a matter of judicial cognizance to decree what and where the agreed boundary is; where there is none, it was a matter cognizable only before the King in council, before the revolution."

In two cases involving violation of federal liquor laws it has been held that the boat violating the law may be seized beyond a three mile limit. In the case of the *Grace and Ruby*, 283 F. 475, it was held:

> "The line between territorial waters and the high seas is not like the boundary between us and a foreign power. There must be, it seems to me, a certain width of debatable waters adjacent to our coasts. How far our authority shall be extended into them for the seizure of foreign vessels which have broken our laws is a matter for the political departments of the government rather than for the courts to determine."

In *U. S.* v. *Ford*, 3 F. (2d) 643, the quotation from *Jones* v. *U. S.* appearing under Point 1 hereof, is set out with approval. This court has also repeated such quotation in *Pearcy* v. *Stranahan*, 205 U. S. 257, 272, which considered

the jurisdiction of United States over the Isle of Pines, and held:

> "The Isle of Pines continues at least *de facto* under the jurisdiction of the government of the Republic of Cuba and that settles the question before us."

The highest courts in several states have likewise held that the question of the establishment of a boundary is one to be settled by the political and not the judicial department of the state government. *State* v. *Wagner,* 61 Me. 178; *Bedel* v. *Loomis,* 11 N. H. 9; *State* v. *Dunwell,* 3 R. I. 127; *Guadalupe County* v. *Wilson County,* 58 Tex. 228; *Harrold* v. *Arrington,* 64 Tex. 233; *Wortham* v. *Sullivan,* 147 S. W. 702.

Point 4.

The Judiciary will recognize the action of the political department of the Government as expressed by the Congress of the United States in approving the Florida Constitution of 1868 which defined the boundaries of the State in words repeated in the Florida Constitution of 1885.

This Court has held in *Phillips* v. *Payne,* 92 U. S. 130, 132:

> "In cases involving the action of the political departments of the government, the judiciary is bound by such action."

The action of the United States Government in regard to the Florida Constitution of 1868 has been fully set forth in the brief for appellant although it is denied that such approval was given to the boundary.

The early case of *Poole* v. *Fleeger,* 36 U. S. 185 held the right of sovereignty to establish boundaries which become conclusive upon all subjects and citizens and we call attention to the quotation from such case which we have set forth under Point 3 hereof.

It has been held by this Court in the case of *Virginia* v. *Tennessee*, 148 U. S. 503 that the consent of Congress need not be expressed, if it be implied by acquiescence.

When this point was first raised in the case of *Pope* v. *Blanton*, 10 Fed. Supp. 18, 22, the lower court held:

> "The Congress accepted this Constitution of 1868 by the passage of Act of June 25, 1868, reciting that the State had adopted the Constitution in accordance with the Act of March 2, 1867 * * * thereby accepting this change in the boundaries, and in effect recognizing that the boundaries of Florida had been extended into the Gulf of Mexico in accordance with the description given in the new Constitution."

This pronouncement by the three-judge district court we feel to be a correct statement. There is not shown to be any rule of law which prohibits the fixing of boundaries at any time by a state so long as it does not affect the territory of some other state of the Union. It is our belief that Congress has recognized the boundary of Florida as being three leagues from the mainland in the Gulf of Mexico and this Court is bound thereby.

Reply to Contentions of Appellant.

We feel that no good reason is shown in appellant's brief why the State of Florida could not extend its boundaries to three leagues from the mainland, nor that the Congress of the United States did not expressly or impliedly recognize and approve such action when it readmitted Florida to the Union after the adoption of the 1868 Constitution. The main attempt to have the provisions in the Constitution as to the boundaries void is based upon treaties of the United States and declarations of various persons as to a three mile limit. There is no case cited which held that three miles was the limit to which a state could extend its

boundaries; they merely state that such distance is a minimum. The treaties mentioned do not in any case touch upon the boundaries of the State of Florida and until some treaty is shown that does limit the boundary we do not believe they are in point.

Conclusion.

For the reasons set forth herein, it is respectfully urged that the appeal be dismissed.

Respectfully submitted,

J. TOM WATSON,
Attorney General of Florida;
NATHAN COCKRELL,
Assistant Attorney General;
Counsel for Appellee.

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